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DEPARTMENT OF  
TELECOMMUNICATIONS & ENERGY

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02-218

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COMMISSIONER

Received  
April 14, 2000

APR 20 2000  
Common Carrier Bureau  
Network Service Division  
Office of the Chief

Magalie Roman Salas, Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: Commonwealth of Massachusetts Department of Telecommunications and Energy's  
Application for Review In the Matter of Bell Atlantic Petition for Modification of  
LATA Boundaries - File No. NSD-L-98-116

Dear Secretary Salas:

Enclosed for filing in the above-referenced matter please find one original and five (5) copies of the Commonwealth of Massachusetts Department of Telecommunications and Energy's Application for Review.

Sincerely,

Tina W. Chin, Esq.

Encl.

cc: Mary L. Cottrell, DTE, Secretary  
Service List

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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In the Matter ofBell Atlantic Petition for Modification  
of LATA Boundaries

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File No. NSD-L-98-116

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY'S  
APPLICATION FOR REVIEW**

Commonwealth of Massachusetts  
Department of Telecommunications and Energy

James Connelly, Chairman  
W. Robert Keating, Commissioner  
Paul B. Vasington, Commissioner  
Eugene J. Sullivan, Jr., Commissioner  
Deirdre K. Manning, Commissioner

One South Station  
Boston, Massachusetts 02110  
(617) 305-3500

Dated: April 14, 2000

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

In the Matter of 

Bell Atlantic Petition for Modification  
 of LATA Boundaries

File No. NSD-L-98-116

**COMMONWEALTH OF MASSACHUSETTS  
 DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY'S  
 APPLICATION FOR REVIEW**

Pursuant to section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, the Commonwealth of Massachusetts Department of Telecommunications and Energy ("Department") hereby files this application for review of the Order of the Deputy Chief, Common Carrier Bureau, issued in this proceeding on March 16, 2000 ("Order"). In the Order, the Deputy Chief denied the petition, made by Bell Atlantic - Massachusetts ("Bell Atlantic"), for limited modification of the Local Access Transport Area ("LATA") boundary so that the Town of Erving, Massachusetts, would no longer be divided between the Eastern and Western LATAs. For the reasons set forth below, the Department respectfully submits that the Deputy Chief's action is factually infirm and in conflict with precedent and established Commission policy. Therefore, the Department requests the Commission to reverse the Order and grant Bell Atlantic's petition for modification.

**I. BACKGROUND**

On December 12, 1997, the Board of Selectman of the Town of Erving filed a petition with the Department requesting, in part, that the Town, which is currently divided between the

Eastern and Western LATAs, be unified entirely in the Western LATA. On August 12, 1998, the Department issued its decision granting the Town's petition on this issue and specifically directed Bell Atlantic to file a petition with the Commission for modification of the LATA boundary.<sup>1</sup>

On September 2, 1998, Bell Atlantic filed with the Commission its petition for limited modification of the LATA boundary to unify the Town of Erving, Massachusetts into a single LATA. The Department participated in the proceedings before the Common Carrier Bureau, submitting comments in support of Bell Atlantic's petition. As noted above, the Deputy Chief denied the petition. The Department is aggrieved by the Deputy Chief's order because it effectively overrules the Department's decision in D.T.E. 97-109, based on a full evidentiary record, of how to meet the needs of the citizens of Erving, Massachusetts.

## II. DISCUSSION

The Department respectfully requests that the Commission reverse the Order issued by the Deputy Chief and grant Bell Atlantic's petition for modification. First, the Department concluded that the continuing division of the municipality by a LATA boundary had created significant problems for the Town of Erving, and that the service to the Town was inadequate within the meaning of state statute.<sup>2</sup> Accordingly, the Department determined that the situation should be rectified and directed Bell Atlantic to seek re-alignment of the LATA by

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<sup>1</sup> Petition of the Town of Erving, D.T.E. 97-109 (August 12, 1998) ("D.T.E. 97-109").

<sup>2</sup> D.T.E. 97-109, at 5.

petitioning the Commission for modification of the LATA boundary.<sup>3</sup> The Deputy Chief apparently did not disagree with the Department's conclusion that the existing situation involves significant problems for the Town of Irving, yet the Order reveals no basis for why the Deputy Chief chose to second-guess the Department's findings concerning the best way to provide telephone service in the Town of Irving and to serve the public interest. Nor did the Deputy Chief identify any harm that would be done to any individual or carrier if the LATA boundary was modified. While the Order repeatedly expressed the Bureau's sympathy for the situation in which the people of Irving find themselves,<sup>4</sup> the Bureau seemed more concerned by the prospect that it might have to deal with "numerous" similar requests from other localities if it granted Bell Atlantic's LATA modification request.<sup>5</sup> This, of course, is not reason to deny a meritorious petition. Moreover, there is nothing to suggest that there are scores of similarly situated municipalities that are ready to flood the Bureau with requests for LATA boundary modifications — the Irving situation is unique in Massachusetts, and the Department has no reason to believe that it is any more common elsewhere.

Second, the Deputy Chief "encourage[s] the residents of Irving] to continue to explore with Bell Atlantic other options that might meet their needs" that do not require modifying the LATA boundary.<sup>6</sup> After a thorough review, however, the Department found that there were no other satisfactory options. More precisely, the Department considered three ways to unify

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<sup>3</sup> Id.

<sup>4</sup> Order ¶ 11.

<sup>5</sup> Id.

<sup>6</sup> Id.

the Town of Erving in the 413 area code, as they requested, and to satisfy their "desire to be recognized as a western LATA community."<sup>7</sup> One of the options, referred to in the Order as "option 1," involved creating a special exception in Bell Atlantic's network to provide service to the 300 to 400 affected customers. Other carriers, including the interexchange carriers that serve Erving, would also have to create similar exceptions in their networks. The Department, however, specifically rejected this approach because it failed to meet the Town's requirements and because we were — and continue to be — concerned that it is not operationally sound and could actually degrade service to these customers.<sup>8</sup> The remaining two options under consideration involved a LATA boundary change.<sup>9</sup>

The record of the Department's review of the options was before the Deputy Chief, and his order does not contest the Department's findings or suggest any option that the Department and the parties might have overlooked. Although the Order also finds that the location of the LATA boundary is irrelevant to the problems in Erving — concluding "that none of Erving's difficulties result[ed] from the location of the LATA boundary,"<sup>10</sup> if modifying the LATA boundary was not a necessary part of the solution in Erving, the Department would not have required it. We would have selected a plan that the carriers could have implemented

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<sup>7</sup> D.T.E. 97-109, at 2.

<sup>8</sup> The problems with this approach are documented in Bell Atlantic's 1998 filings with the Department, which were attached to the March 1, 1999, ex parte letter from Bell Atlantic.

<sup>9</sup> Because the LATA boundary was originally drawn to follow the NPA boundary, it would make sense to change the LATA when the NPA is changed.

<sup>10</sup> Order at ¶ 10.

immediately, without having to seek permission from the Commission. In reviewing the Deputy Chief's order, the Commission must understand that it has left the residents of Erving, and the Department, with no practical option to resolve the problems.

Third, in addition to being factually infirm, the Deputy Chief's Order is also in conflict with established precedent and Commission policy. The Commission delegated to the Bureau the authority to act on requests to modify LATA boundaries consistent with the principles it established in its July 15, 1997, Memorandum Opinion and Order.<sup>11</sup> One of these principles is that significant weight should be given to the approval of the relevant State commission.<sup>12</sup> Other factors that support modifying a LATA boundary include the community of interest in the affected area and the small number of customers involved.<sup>13</sup> None of the factors the Commission instructed the Bureau to consider weigh against granting the Erving request. Bell Atlantic's request for modification of LATA boundaries fully satisfies the Commission's standards, and the Bureau should have granted it.

Finally, the Order reveals that the approach to LATA modifications should be revised. The record showed that the community wanted the change, the Department approved it, Bell Atlantic was willing to make it happen, and *nobody at all objected to the change*. On these

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<sup>11</sup> Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations, 12 FCC Rcd 10646, at ¶ 23 (1997).

<sup>12</sup> Id. at ¶ 24.

<sup>13</sup> Id. There are only 300 to 400 customers involved. The fact that these customers in the eastern half of Erving have local calling to 14 exchanges in the Western LATA but to only two other exchanges in the Eastern LATA clearly demonstrates that Erving's community of interest is with the Western LATA.

facts, the Bureau should have quickly granted the application and moved on to more difficult matters. Instead, the Bureau waited more than 18 months and then denied the request, giving no reason other than its fear that others might seek the same relief.

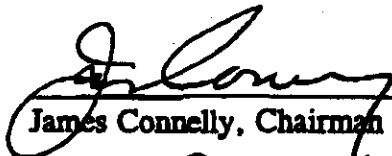
### III. CONCLUSION

WHEREFORE, the foregoing reasons, Department respectfully requests that the Commission grant this application for review, reverse the Order and grant Bell Atlantic's petition for modification of LATA boundaries.


Respectfully submitted,

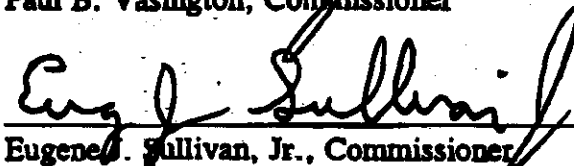
Commonwealth of Massachusetts  
Department of Telecommunications and Energy

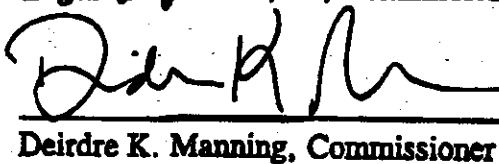
By:

  
James Connelly, Chairman

  
W. Robert Keating, Commissioner

  
Paul B. Vasington, Commissioner

  
Eugene J. Sullivan, Jr., Commissioner

  
Deirdre K. Manning, Commissioner

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File No. NSD-L-98-116

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